GUIDELINES FOR CREDIT PURCHASES
OF EQUIPMENT AND ENERGY PROJECTS
BY STATE AGENCIES, INSTITUTIONS, BOARDS & AUTHORITIES

INCLUDES THE MASTER EQUIPMENT LEASING PROGRAM (MELP),
THE VIRGINIA ENERGY LEASING PROGRAM (VELP),
AND VENDOR/THIRD PARTY FINANCING AGREEMENTS
ISSUED BY THE
COMMONWEALTH OF VIRGINIA
TREASURY BOARD
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1. BACKGROUND

1.1 Legislation enacted by the Virginia General Assembly in 1985, and amended in 1987, empowered the Treasury Board to undertake credit purchase financing of the personal property equipment needs of all state agencies and institutions. In response to this legislation, the Treasury Board created the Master Equipment Leasing Program ("MELP") and issued guidelines, dated December 1987, governing the MELP and vendor/third party financing agreements. The guidelines were updated in May 1990 ("Treasury Board Regulations for Credit Purchases By State Agencies and Institutions").

1.2 Legislation enacted by the Virginia General Assembly in 1994 added a provision for financing energy efficiency projects of state agencies and institutions. In response to this legislation, the Treasury Board created the Virginia Energy Leasing Program ("VELP").

1.3 These guidelines repeal and supersede the previously issued regulations and set forth the policies and procedures governing the MELP, the VELP, and other third party/vendor financing agreements.

1.4 It is the intention of the Treasury Board to provide efficient and cost-effective financing programs for the personal property equipment needs and energy efficiency projects of state agencies and institutions. It is the intention of the Treasury Board that these guidelines should not require additional resources, personnel, or time for compliance by state agencies and institutions.

2. PURPOSE

2.1 These guidelines establish the policies and procedures to be followed by all state agencies and institutions (the "Using Agencies") for the credit purchases of equipment and energy projects, where payment of the purchase price is deferred through installment payments and includes the payment of interest, or is otherwise financed by the seller, lessor, or third party (See Code of Virginia Section 2.1-179.2).

2.2 These guidelines are issued to ensure that all Using Agencies obtain the best credit terms and financing arrangements available and that such terms and arrangements are efficient and in the best interests of the Commonwealth as a whole.

2.3 These guidelines are supplemental to other guidelines, regulations, and directives issued by agencies and officers of the Commonwealth having administrative responsibilities for the procurement of goods and services, the accounting for credit purchases, and the management of energy projects. Using Agencies are specifically referred to the Virginia Public Procurement Act, the Agency Procurement and Surplus Property Manual ("APSPM") issued by the Department of General Services ("DGS"), the Commonwealth Accounting Policies and Procedures Manual ("CAPP Manual") issued by the State Comptroller, and the Virginia Energy Plan ("Energy Plan") issued by the Department of Mines, Minerals, and Energy ("DMME").

3. AUTHORITY

3.1 These guidelines are promulgated under the authority of Section 2.1-179.2 of the Code of Virginia and are not intended to have the force and effect of law.

3.2 Credit purchases as defined herein must also be made in accordance with the APSPM, the CAPP Manual, and the Energy Plan to the extent such procedures are applicable.

4. APPLICABILITY

4.1 These guidelines shall apply to all administrative units of the Commonwealth, including agencies, departments, institutions, commissions, boards, councils, authorities, or other such bodies however designated, unless otherwise specifically excluded by law, regardless of the source of funds by which the credit purchase is made.

5. DEFINITIONS

5.1 **Credit Purchase**. A procurement where the payment of the purchase price is deferred through installment payments and includes the payment of interest, or is otherwise financed by the seller, lessor, or third party. The term as used in these guidelines refers to installment purchases, capital leases, or similar financing arrangements where ownership passes to the Using Agency at some point during the term of the agreement, or where the payments made under the agreement substantially cover the purchase price, or where the length of the term of the agreement substantially covers the useful life of the equipment. For clarification Using Agencies are referred to the Lease Accounting Section of the CAPP Manual and the Fixed Assets & Lease Accounting staff in the Department of Accounts ("DOA").

5.2 **Equipment**. All personal property other than real property. The term as used in these guidelines applies only to the credit purchase of new or reconditioned tangible personal property and includes personal property to be affixed to realty.

5.3 **Energy Projects**. State agency energy efficiency projects may include personal property, the installation or modification of an installation in a building, and professional management and other services which are primarily intended to reduce energy consumption and demand or allow for the use of an alternative energy source, and which may contain integral control and measurement devices.

5.4 **Escrow Financing**. A type of credit purchase whereby a bank account is established for use by the Using Agency to purchase equipment or fund an energy project over a period of time. The entire cost of the equipment or energy project is placed in the escrow account at the onset of the project. The financing is effective as of the date the escrow account is established. Special rules govern the use of escrow financings (see Sections 8.4 and 9.6 herein).

5.5 **Reimbursement Financing**. A type of credit purchase whereby the Using Agency pays for the equipment or energy project with agency funds and then seeks a reimbursement through a financing arrangement. Special rules govern the use of reimbursement financings (see Sections 8.3 and 9.5 herein).

5.6 **Using Agency**. All administrative units of the Commonwealth of Virginia, including agencies, departments, institutions, commissions, boards, councils, authorities, or other such bodies however designated, unless otherwise specifically excluded by law. The term as used in these guidelines includes institutions of higher education.

6. GENERAL PROVISIONS

6.1 Each Using Agency shall adhere to the policies of the APSPM relating to the procurement of equipment and energy projects and the financing thereof. All procurement documentation required shall be maintained in an appropriate file which must be retained and made available for audit.

6.2 Each Using Agency shall adhere to the policies of the CAPP Manual relating to the management and accounting of leases. All documentation for any economic or other analyses required shall be maintained in an appropriate file which must be retained and made available for audit.

6.3 Each Using Agency shall adhere to the policies of the Energy Plan relating to the identification and management of energy projects. All documentation required shall be maintained in an appropriate file which must be retained and made available for audit.

6.4 Each Using Agency, once it is determined that a credit purchase is justified, shall use only such financing arrangements as are made available by the Treasury Board (MELP or VELP), or in the alternate, document by written finding that it has access to a more favorable financing arrangement (vendor/third party financing).

6.5 Each Using Agency, once it is determined that a credit purchase is justified, shall use such financing with the understanding that provisions in the various financing contracts may limit the agency's prepayment options. **Equipment or Energy leasing programs should not be used solely to enhance an agency's cash flow management**.

6.6 Each Using Agency, in procuring financing for credit purchases, whether such have been made available by the Treasury Board or otherwise, shall use only those forms, contracts, terms and conditions as are approved by the Treasury Board.

6.7 Using Agencies should avoid credit purchases where the equipment or energy project to be purchased has a fair market value of less than $10,000 or the term of the contract is less than three years.

6.8 Each Using Agency shall certify that the equipment or energy project is essential and will be used for governmental purposes only.

6.9 Each Using Agency shall certify that it will request appropriations each year from the General Assembly to make the installment payments for such credit purchases.

6.10 Each Using Agency must be aware that the MELP and VELP are blanket agreements and each financing under a master lease contract constitutes an "appendix" to the master lease agreement. The security structure of the master lease agreements provides for cross-default, whereby a default by one Using Agency on its installment payments could cause all of the other appendices under the same master lease to be in default. The financing institution has a security interest in all of the equipment or energy projects financed under one master lease agreement and has the right to repossess any or all equipment or energy projects thereunder if a default occurs. **Such an occurrence could negatively impact the creditworthiness of the Commonwealth as a whole**.

6.11 Notwithstanding the provisions in Section 7.1 below, Using Agencies shall not attempt to avoid these guidelines by disaggregating equipment or energy projects of a similar nature where that aggregate value is clearly above the threshold amounts.

6.12 Each Using Agency shall adhere to the procedures issued by the Treasury Board for obtaining approval of the financial terms of any contract involving credit financing, subject only to the exceptions outlined in Section 7 below.

7. EXCEPTIONS

7.1 Credit purchases of equipment with a fair market value of less than $10,000 are exempt from review and approval by the Treasury Board and the procedures set forth herein pursuant to the discretion granted in Section 2.1-179.2. Credit purchases of energy projects which have a cost of less than $50,000 are exempt from review and approval by the Treasury Board and the procedures set forth herein.

7.2 Credit purchases of equipment through the Virginia College Building Authority and the Virginia Public Building Authority equipment financing programs are exempt from review and approval by the Treasury Board and the procedures set forth herein.

7.3 The Treasury Board may exempt from its review and approval and the procedures set forth herein such specific credit purchases as it in its sole discretion shall deem to be in the best interests of the Commonwealth to so exempt, notwithstanding any other provisions to the contrary.

8. PROCEDURES FOR USING THE MASTER EQUIPMENT LEASING PROGRAM (MELP)

8.1 Following standard operating procedures, a Using Agency will determine equipment needs and specifications and whether financing through MELP is needed.

8.2 The Using Agency shall submit an MELP financing request certificate to Treasury Board staff indicating the equipment description, the estimated cost of the equipment, the length or term of the financing desired, whether the financing will take the form of a reimbursement, whether an escrow financing is needed, and the purpose/essentiality of the equipment.

8.3 In the case of a reimbursement financing, a Using Agency shall submit a request prior to, but no later than 30 days after, making the first expenditure for the equipment. Federal regulations require the Treasury Board to issue, within 60 days of the expenditure date, an official notice of intent to reimburse a Using Agency.

8.4 In the case of an escrow financing, a Using Agency must contact Treasury Board staff for special instructions. An escrow agreement and special drawdown forms must be prepared and executed.

8.5 Treasury Board staff will forward the request to the MELP financing institution. Upon notification of approval by the financing institution, the Using Agency will be sent an approval letter accompanied by the MELP financing forms and instructions.

8.6 Approved financing requests will remain active for 24 months from the date of approval. A Using Agency must submit a new request if the equipment in the original request is not financed or partially financed within 24 months.

8.7 Following standard operating procedure, the Using Agency shall obtain the equipment in accordance with state procurement regulations.

8.8 Once the equipment is delivered and accepted, the Using Agency shall complete the MELP financing forms, attach the equipment invoice, and submit the documents to Treasury Board staff at least two weeks prior to the vendor payment date.

8.9 Treasury Board staff will lock in the interest rate, prepare a payment schedule, complete certain state and federal forms, and send the completed package to the financing institution for funding.

8.10 The financing institution will make full payment to the equipment vendor or the agency in the case of a reimbursement financing.

8.11 Once the financing institution provides written verification of vendor payment, the Using Agency will be sent a copy of the entire financing package, including the payment schedule.

8.12 The financing institution will provide the Using Agency with appropriate invoices or a payment booklet from which to make installment payments. The Using Agency shall make installment payments directly to the financing institution. **Neither the Treasury Board nor the Department of the Treasury are involved in the payment process**.

8.13 A Using Agency may prepay an MELP financing in whole on any payment date. Prepayments may be subject to prepayment penalties. Using Agencies must contact Treasury Board staff for prepayment instructions.

8.14 Using Agencies must contact Treasury Board staff for the current MELP rates, forms and instructions.

9. PROCEDURES FOR USING THE VIRGINIA ENERGY LEASING PROGRAM (VELP)

9.1 Following the Energy Plan, a Using Agency will identify energy projects and determine whether financing through VELP is needed.

9.2 The Using Agency shall submit a preliminary request to Treasury Board staff to reserve an approximate amount of funding authorization for its energy project.

9.3 The Using Agency shall perform an energy feasibility study/audit to determine the feasibility, scope and cost of an energy project.

9.4 The Using Agency shall submit a VELP financing request certificate to Treasury Board staff indicating the project description, the estimated cost, the length or term of the financing desired, whether the financing will take the form of a reimbursement, whether an escrow financing is needed, and the purpose/essentiality of the project.

9.5 In the case of a reimbursement financing, a Using Agency shall submit a request prior to, but no later than 30 days after, making the first expenditure for the project. Federal regulations require the Treasury Board to issue, within 60 days of the expenditure date, an official notice of intent to reimburse a Using Agency.

9.6 In the case of an escrow financing, a Using Agency must contact Treasury Board staff for special instructions. An escrow agreement and special drawdown forms must be prepared and executed.

9.7 Treasury Board staff will forward the request to the VELP financing institution. Upon notification of approval by the financing institution, the Using Agency will be sent an approval letter accompanied by the VELP financing forms and instructions.

9.8 Approved financing requests will remain active for 24 months from the date of approval. A Using Agency must submit a new request if the energy project in the original request is not financed or partially financed within 24 months.

9.9 Following standard operating procedure, the Using Agency shall procure the project in accordance with state procurement procedures.

9.10 Once the project is completed and accepted, the Using Agency shall complete the VELP financing forms, attach the appropriate invoices, and submit the documents to Treasury Board staff at least two weeks prior to the vendor payment date.

9.11 Treasury Board staff will lock in the interest rate, prepare a payment schedule, complete certain state and federal forms, and send the completed package to the financing institution for funding.

9.12 The financing institution will make full payment to the vendors or the agency in the case of a reimbursement financing.

9.13 Once the financing institution provides written verification of vendor payment, the Using Agency will be sent a copy of the entire financing package, including the payment schedule.

9.14 The financing institution will provide the Using Agency with appropriate invoices or a payment booklet from which to make installment payments. The Using Agency shall make installment payments directly to the financing institution. **Neither the Treasury Board nor the Department of the Treasury are involved in the payment process**.

9.15 A Using Agency may prepay a VELP financing in whole on any payment date. Prepayments may be subject to prepayment penalties. Using Agencies must contact Treasury Board staff for prepayment instructions.

9.16 Using Agencies must contact Treasury Board staff for the current VELP rates, forms and instructions.

10. PROCEDURES FOR USING VENDOR/THIRD PARTY FINANCINGS

10.1 When a Using Agency contemplates the credit purchase of equipment or an energy project from a vendor or third party, it shall procure such financing in accordance with the APSPM. The Using Agency may contact Treasury Board staff for assistance in preparing such bid documents.

10.2 Vendor/third party financing may take the form of a normal installment purchase, a reimbursement financing, an escrow financing, or a capital lease.

10.3 The Using Agency, prior to entering into a vendor/third party financing, shall submit a written request to Treasury Board staff with a copy of the financing agreement including the rate and terms. The Treasury Board's review is limited to the financial terms and conditions of the financings. Vendor/third party financings which offer more favorable terms and rates than the MELP or VELP are normally approved.

10.4 For financings of less than $500,000, Treasury Board staff will review the agreement and notify the Using Agency of approval or disapproval.

10.5 Financings of $500,000 or more will be considered by the Treasury Board. Using agencies shall submit their requests at least two weeks prior to the next scheduled Treasury Board meeting. The Treasury Board typically meets on the third Wednesday of each month. Using Agencies will be notified of the Board's action immediately after the meeting. Using Agencies must contact Treasury Board staff for specific dates and instructions.

10.6 Reimbursement financings, escrow financings and capital leases may require a longer review process due to their complexity.

10.7 Treasury Board's review and approval is limited to the financial terms and conditions. Vendor/third party financing agreements must be reviewed by the Using Agency's legal counsel.

10.8 Once approval is granted, the Using Agency shall contract for the equipment or energy project in accordance with state procurement procedures.

10.9 The Using Agency will accept the equipment or energy project and send all necessary documentation directly to the vendor/third party for financing.

10.10 The vendor/third party will send to the Using Agency a copy of the payment schedule and provide the Using Agency with appropriate invoices from which to make installment payments. The Using Agency shall make installment payments directly to the vendor/third party.

10.11 The Using Agency shall submit a copy of all finalized documents to Treasury Board staff.

11. AMENDMENT

The Treasury Board may from time to time issue amendments to these guidelines.

12. EFFECTIVE DATE

The guidelines are effective immediately upon adoption by the Treasury Board.

13. TREASURY BOARD STAFF

The Department of the Treasury provides staff services to the Treasury Board.

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